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OFFICE OF PETITIONS

In re Application of :
Kohei Takamatsu et al.. :
Application No. 10/784,666 : DECISION ON PETITIONS
Filed: February 23, 2004 : UNDER 37 C.F.R. §§ 1.137(A),
Attorney Docket Number: : 1.137(B), and 1.181
0941.69863 :
Title: ECCENTRICITY CORRECTION :
DATA RECORDING METHOD AND :
RECORDING MEDIUM HAVING :
ECCENTRICITY CORRECTION DATA :

This is a decision on the petitions filed August 23, 2006, pursuant to 37 C.F.R. §§ 1.137(a), 1.137(b), and 1.181, requesting that the holding of abandonment in the above-identified application be withdrawn and/or that the present application be revived.

The above-identified application became abandoned for failure to reply within the meaning of 37 C.F.R. §1.113 in a timely manner to the final Office action mailed January 11, 2006, which set a shortened statutory period for reply of three months¹. An after-final amendment was received on May 15, 2006 along with a one-month extension of time (the submission contained a certificate of mailing dated May 10, 2006), and an advisory action was mailed on May 25, 2006. No further extensions of time under the provisions of 37 C.F.R. §1.136(a) were obtained, and no further responses were received. Accordingly, the above-identified application became abandoned on May 11, 2006.

¹ It is noted that the electronic file does not appear to contain a copy of the final Office action.

With the present petitions, Petitioner has asserted that a Request for Continued Examination (RCE) was submitted on June 7, 2005. Petitioner has submitted a copy of this submission, and it is noted that it contains a certificate of mailing dated June 7, 2005.

The petition under 37 C.F.R. §1.181:

Petitioner has requested that the holding of abandonment in the above-identified application be withdrawn, and has submitted a copy of the response which was purportedly submitted to the Office in a timely manner.

37 C.F.R. § 1.8(b) sets forth, *in toto*:

In the event that correspondence is considered timely filed by being mailed or transmitted in accordance with paragraph (a) of this section, but not received in the U.S. Patent and Trademark Office after a reasonable amount of time has elapsed from the time of mailing or transmitting of the correspondence, or after the application is held to be abandoned, or after the proceeding is dismissed, terminated, or decided with prejudice, the correspondence will be considered timely if the party who forwarded such correspondence:

- (1) Informs the Office of the previous mailing or transmission of the correspondence promptly after becoming aware that the Office has no evidence of receipt of the correspondence;
- (2) Supplies an additional copy of the previously mailed or transmitted correspondence and certificate; and
- (3) Includes a statement which attests on a personal knowledge basis or to the satisfaction of the Director to the previous timely mailing or transmission. If the correspondence was sent by facsimile transmission, a copy of the sending unit's report confirming transmission may be used to support this statement.

Petitioner has set forth the procedure that is used in his office when filing an RCE. An administrative assistant prepares the RCE, and submits it to the attorney for his review. The attorney then executes the certificate of mailing, and returns the papers to the administrative assistant. The administrative assistant then delivers the papers to the mailroom, where they are placed in an envelope and deposited with the USPS later that day.

It is noted that the attorney executed the certificate of mailing, and it is clear that the attorney did not have personal knowledge of the actual mailing. It does not appear that any statement has been provided from either the administrative assistant or someone in the mailroom.

As such, Petitioner has not met the requirements of 37 C.F.R. §1.8(b)(3), and the petition under 37 C.F.R. §1.181 must be **DISMISSED**.

The petition under 37 C.F.R. §1.137(a):

The fee associated with the filing of this petition has been charged to Petitioner's deposit account.

Petitioner has established that the entire period of delay was unavoidable.

As such, the petition under 37 C.F.R. §1.137(a) is **GRANTED**.

The petition under 37 C.F.R. §1.137(b) will not be addressed. The fee associated with the filing of this petition will not be charged to Petitioner's deposit account.

The Technology Center will be notified of this decision. The Technology Center's support staff will notify the Examiner of this decision, so that the RCE which was received with the present petition can be processed.

Telephone inquiries regarding *this decision* should be directed to the undersigned at (571) 272-3225. All other inquiries concerning examination procedures or status of the application should be directed to the Technology Center.



Paul Shanoski
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United States Patent and Trademark Office